TONEY J. LISTER
ATTORNEY AT LAW
61 Lake Forest Drive
Spartanburg, SC 29302

Telephone: (864) 680-5454

RECEIVED
MAY 19 2014
S.C. Supreme Court

May 16, 2014

The Honorable Daniel E. Shearouse
South Carolina Supreme Court, Clerk
Supreme Court Building
1231 Gervais Street
Columbia, South Carolina 29201

RE: Beverly R. Wheeler v. Spartanburg School District Six
Appellate Case No.: 2012-213717
WCC File No.: 1011278

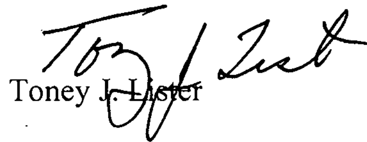
Dear Mr. Shearouse:

Enclosed are the following:

- The original and fifteen (15) copies of the Initial Brief of Petitioner;
- The original and thirteen (13) copies of the Petitioner's Appendix; and
- A Proof of Service.

By copy of this letter, we are serving the defendant's attorney with copies of these documents.

Sincerely,



Toney J. Lister

TJL/nmp
Enclosures

cc: Jason A. Griggs, Esq.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. Supreme Court

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Avery B. Wilkerson, Jr., Commissioner
Derrick L. Williams, Commissioner
T. Scott Beck, Commissioner

Op. No. 2012-UP-570 (S.C. Ct. App. filed Oct. 24, 2012)
Case Tracking No. 2012-213717

Beverly R. Wheeler,. . . . . Appellant,

v.

Spartanburg School District Six, Employer and Wausau Business
Insurance Company, ...Respondents.

INITAL BRIEF OF PETITIONER

May 16, 2014

Toney J. Lister, Esq.
61 Lake Forest Dr.
Spartanburg, South Carolina 29302
(864) 680-5454

Attorney for Appellant

Other Counsel of Record:
Jason A. Griggs
Willson Jones Carter & Baxley, P.A.
872 S. Pleasantburg Dr.
Greenville, South Carolina 29607
(864) 527-3280

Attorney for Respondents

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STATEMENT OF ISSUES ON APPEAL

1. DID THE COURT OF APPEALS ERR IN AFFIRMING A DECISION OF THE WORKERS' COMPENSATION COMMISSION THAT WRONGLY IMPOSED ON APPELLANT PROOF REQUIREMENTS NOT CONTAINED IN THE STATUTE?

2. DID THE COURT OF APPEALS ERRONEOUSLY DETERMINE THAT SUBSTANTIAL EVIDENCE SUPPORTS THE DECISION OF THE WORKERS' COMPENSATION COMMISSION?

STATEMENT OF THE CASE

This is an appeal of a workers' compensation matter involving a repetitive trauma injury. Appellant alleged she sustained an injury to her wrists and arms as a result of repetitive trauma and alleged May 18, 2010, as her date of injury. The matter was heard by the Single Commissioner, who ruled Appellant did not sustain a compensable repetitive trauma injury. (Single Comm. Order, p. 8). By Decision and Order dated April 26, 2011, the Appellate Panel of the Workers' Compensation Commission ("the Commission") fully affirmed the order of the Single Commissioner, and Appellant appealed to the Court of Appeals. (Comm. Order, p. 5). On October 24, 2012, the Court of Appeals affirmed the Commission's Decision and Order. (Unpublished Opinion No. 2012-UP-570). After her Petition for Rehearing was denied by the Court of Appeals, Appellant petitioned this Court for a Writ of Certiorari, which was granted on April 16, 2014.

STATEMENT OF FACTS

Appellant has worked for School District Six as a custodian almost continuously for twenty years, with the exception of a period of approximately six months several years ago. (Hearing Tr., pp. 7-8). For 7½ hours a day, taking only one 30-minute break, Appellant cleans fifteen classrooms, four bathrooms twice a day, the sixth grade hallway, the principal's office, the assistant principal's office, the guidance office, and the nurse's room and bathroom. (Id., pp.

8-12). Appellant's cleaning activities include sweeping, mopping, vacuuming, emptying trash, and scraping the baseboards and corners. (Id.,12-14).

In May 2010, Appellant talked to the school nurse about her right hand going numb. (Id., pp. 15-16). She was referred by her family doctor to Dr. Robert Ringel, neurologist, who in turn diagnosed bilateral carpal tunnel syndrome. (Id., pp. 17-18; APA #1, p. 1). Ultimately, Dr. Ringel concluded, to a reasonable degree of medical certainty, Appellant's carpal tunnel syndrome was consistent with her work as a custodian, and referred her for surgical intervention. (APA #1, p. 1). Due to Respondents' denial of her claim, Appellant has not yet undergone the recommended surgery, despite continuing to experience sharp pain, tingling and numbness in her wrists. (Hearing Tr., pp. 20-21, 29; APA #2, pp. 15-17). Appellant has no hobbies or activities outside of work that could account for her repetitive trauma injury. (Hearing Tr., p. 21).

STANDARD OF REVIEW

In appeals from decisions of the South Carolina Workers' Compensation Commission, a reviewing court may reverse or modify a decision of the Commission if its findings, inferences, conclusions, or decisions are in violation of statutory provisions, affected by an error of law, clearly erroneous in view of the reliable, probative and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. S.C. Code Ann. § 1-23-380. This Court has held:

> "Substantial evidence" is not a mere scintilla of evidence nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached or must have reached in order to justify its action.

Lark v. Bi-Lo, Inc., 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981).

ARGUMENT

I. THE COURT OF APPEALS ERRED IN AFFIRMING A DECISION OF THE WORKERS' COMPENSATION COMMISSION THAT WRONGLY IMPOSED ON APPELLANT PROOF REQUIREMENTS NOT CONTAINED IN THE STATUTE.

Appellant is alleging a work-related repetitive trauma injury in this instance. "Section 42-1-172(C) commands that the '[c]ompensability of a repetitive trauma injury must be determined *only* under the provisions of this statute.'" Michau v. Georgetown County, 396 S.C. 589, 594, 723 S.E.2d 805, 807 (2012) (citing § 42-1-172(C) (as emphasized in opinion); Murphy v. Corning, 393 S.C. 77, 84, 710 S.E.2d 454, 458 (Ct.App.2011) ("[T]he compensability of a repetitive trauma injury must be determined by the Commission under the provisions of [section] 42-1-172 . . . .")). "A 'repetitive trauma injury' is considered to arise out of employment only if it is established by medical evidence that there is a direct causal relationship between the condition under which the work is performed and the injury." § 42-1-172(D). "Medical evidence" is defined to mean "expert opinion or testimony stated to a reasonable degree of medical certainty, documents, records, or other material that is offered by a licensed and qualified medical physician." § 42-1-172(C).

Here, Dr. Ringel opined to a reasonable degree of medical certainty that Appellant's bilateral carpal tunnel syndrome was consistent with her work as a school custodian. (APA #1, p. 1). As such, Dr. Ringel's statement - on its face - satisfies the requirements of § 42-1-172 (C) and (D). The Commission disregarded Dr. Ringel's statement of causation because "there [was] no evidence that Dr. Ringel saw a job description, viewed a video of the job, nor was told by the claimant the specific job duties she alleged as the cause of her problem." (Comm. Order, p. 8). Of course, given that Dr. Ringel provided an opinion as to causation (to a reasonable degree of medical certainty), he clearly believed he had the necessary information to formulate that

opinion, and it would be speculative of the Commission to assume otherwise.[1] By essentially imposing additional evidentiary requirements regarding proof of causation beyond those required by § 42-1-172 (C) and (D), the Commission committed an error of law, and the Court of Appeals' affirmation should be reversed.

II. THE COMMISSIONS' DECISION IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE.

There is no dispute Appellant has a repetitive trauma injury – namely, carpal tunnel syndrome. In fact, at the initial hearing, the Single Commissioner commented to Appellant on the record as follows: "I don't think there is any argument that you have carpal tunnel syndrome or that you need surgery. The real issue for me to decide is whether this claim meets the requirement of workers' compensation." (Hearing Tr., pp. 38-39). Appellant described in detail her repetitive job duties cleaning classrooms, bathrooms, break rooms, offices and hallways. Appellant explained that scraping the baseboards and corners down the hallway with a long-handled scraper, mopping, and scrubbing commodes are particularly difficult for her. (Id., pp. 13-15). Further, there is no evidence Appellant had any hobbies or engaged in activities outside of work that could account for her repetitive trauma injury.[2] (Id., p. 21; APA #1, p. 1). Appellant's description of her repetitive job duties is undisputed, and her supervisor, Karen Bush (principal at Gable School), described Appellant as a "great employee," stating: "I love [Appellant]." (Id., p. 40).

There is no reliable, substantial evidence that would allow for any conclusion other than that Appellant suffered a compensable, repetitive trauma injury. Rather, the contrary "evidence"

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[1] It should be noted Respondents never deposed Dr. Ringel to directly challenge his opinion (or the basis for his opinion).

[2] Specifically, Appellant testified her adult son does the household chores, meaning she only engages in these activities at work. (Hearing Tr., p. 21). Also, Dr. Ringel expressly ruled out the possibility there were other activities outside of work which could have caused her injury. (APA #1, p. 1).

is comprised primarily of a one-page, check-the-box statement from Dr. Edwin Rudisill. There is nothing in the record to indicate the nature of Dr. Rudisill's practice or otherwise identifying why it would be appropriate for him to opine on the issue of causation relative to the development of carpal tunnel syndrome. (APA #3, p. 19). While Dr. Rudisill asserts in his statement he reviewed a job description, there is nothing in the record establishing what exactly he reviewed, how the job was described, or from where that description came. (Id.). Further, as the Commission even acknowledged, Dr. Rudisill never actually examined or spoke with Appellant, such that there would have been no way for Dr. Rudisill to know whether the job description he claims to have reviewed was accurate. (Comm. Order, p. 3).

The other finding upon which the Commission relied in denying Appellant's claim was its view that there was "no medical evidence to show that pushing a dust mop, cleaning windows, emptying trash cans, cleaning restrooms, dusting, or vacuuming . . . ***puts stress on the same muscle groups***." (Comm. Order, p. 4) (emphasis added). There is no medical evidence in the record from any medical professional noting the development of carpal tunnel syndrome requires "stress on the same muscle groups." In fact, carpal tunnel syndrome is not muscle-related, it is a problem with the **nerves** in the carpal tunnel, and this diagnosis is confirmed through nerve conduction testing, such as that which Appellant underwent in this instance. (APA #1, pp. 5-12).

In reversing the Commission's denial of compensability, the Court of Appeals in Burnette v. City of Greenville, 401 S.C. 417, 737 S.E.2d 200 (Ct.App.2012), found it "particularly disturbing" there was a medical finding made for which there was no medical evidence, leading to the conclusion it was "the medical opinion of the single commissioner, adopted by the Commission." 401 S.C. at 428. The Court of Appeals further noted its previous

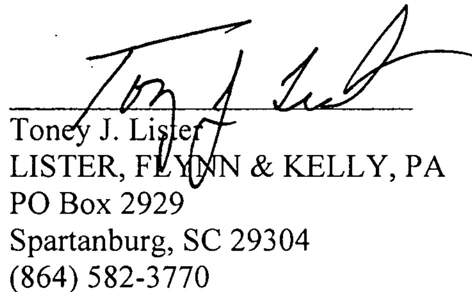
decision in Potter v. Spartanburg Sch. Dist. 7, 395 S.C. 17, 23, 716 S.E.2d 123, 126 (Ct.App.2011), "permitting the Commission to disregard medical evidence **only when other competent evidence exists in the record**." Id. (emphasis added). In this instance, the Commission likewise appears to have adopted the medical opinion of the Single Commissioner regarding the need for "stress on the same muscle groups" as it relates to carpal tunnel syndrome, and it is plain there is no other competent evidence in the record disputing Dr. Ringel's opinion (certainly not that of Dr. Rudisill). Therefore, there is no substantial evidence supporting the Commission's decision.

CONCLUSION

Based upon the foregoing, Appellant respectfully requests that this Court reverse the Court of Appeals' affirmation of the Decision and Order of the Workers' Compensation Commission, and issue an Order establishing her entitlement to benefits.

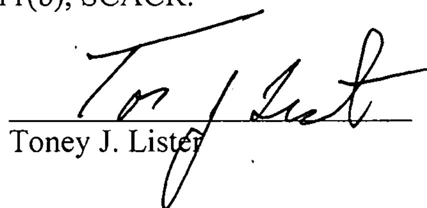
Respectfully submitted,

May 16, 2014



Toney J. Lister
LISTER, FLYNN & KELLY, PA
PO Box 2929
Spartanburg, SC 29304
(864) 582-3770

I certify that this brief complies with Rule 211(b), SCACR.



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Case Tracking No. 2012-213717

Beverly R. Wheeler, Appellant,

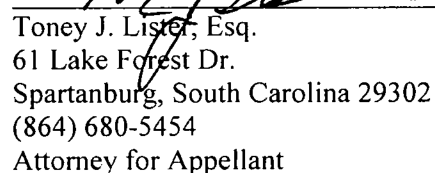
v.

Spartanburg School District Six and
Wausau Business Insurance Company, Respondents.

PROOF OF SERVICE

I certify that I have served the Initial Brief of Petitioner and Petitioner's Appendix on the above-named Respondents, Spartanburg School District Six and Wausau Business Insurance Company, this 16th day of May 2014, by depositing the same in the United States Mail, first class postage prepaid, addressed to their attorney of record, as follows:

Jason A. Griggs
Willson Jones Carter & Baxley, P.A.
872 S. Pleasantburg Dr.
Greenville, South Carolina 29607



Toney J. Lister, Esq.
61 Lake Forest Dr.
Spartanburg, South Carolina 29302
(864) 680-5454
Attorney for Appellant